



Erik Dykema, Esq.
BOCHNER PLLC

1040 Avenue of the Americas, 15TH Floor, New York, NY 10018

o 646.971.0685 e erik@bochner.law w bochner.law

July 31, 2024

VIA ECF

The Honorable Gregory H. Woods
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 2260
New York, NY 10007

USDC SDNY
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MEMORANDUM ENDORSED

Re: *City of New York v. EnviroMD Group LLC et al* [1:2024-cv-05161]
Request for Pre-Motion Conference on Defendants' Motion to Dismiss

Dear Judge Woods,

Our firm is counsel to Defendants EnviroMD Group LLC, KLCC Wholesale Inc., RZ Smoke Inc., Urban Smoke Distributors, and GT Imports (collectively "Defendants") in the above-referenced matter. This case was recently removed from the New York County Supreme Court by Defendants Vape More In. a/k/a More LLC and Vape Plus Distribution Corp. a/k/a G&A Distribution (collectively "Vape More Defendants") and is pending before Your Honor.

We write in accordance with Your Honor's Individual Rules and pursuant to Your Honor's text order denying Defendants' Motion to Dismiss [ECF 37]. We write to request a pre-motion conference regarding Defendants' filing of its Motion to Dismiss.

Defendants respectfully request that this Court dismiss the First Amended Complaint ("FAC") [ECF 1-41], on the grounds that the City of New York ("Plaintiff") does not have standing to enforce the PACT Act, Defendants are not obligated to file PACT Reports with Plaintiff, the FAC fails to state a claim stemming from "interstate commerce" and/or "sales to consumers" as defined by the PACT Act. Defendants motion to dismiss further details that New York Public Health Law § 1399-ll does not restrict sales to distributors, that the restrictions imposed by New York City Administrative Code § 17-715 are applicable only to businesses engaged in retail sale of electronic cigarettes, and that Plaintiff's public nuisance claim is both time-barred and duplicative of its other claims. Finally, Defendants' motion to dismiss argues that Plaintiff's FAC fails to plead facts sufficient to state a claim as to each of the Defendants, since it includes generalized assertions of sales to intra-state businesses rather than particularized examples of any alleged violative conduct.

Accordingly, we respectfully request that this Court schedule a pre-motion conference to discuss the Defendants' motion to dismiss.

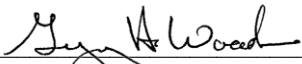
Application granted. Defendants' request for a pre-motion conference is granted. Dkt. No. 43. The Court will discuss Defendants EnviroMD Group LLC, KLCC Wholesale Inc., RZ Smoke Inc., Urban Smoke Distributors, and GT Imports' proposed motion to dismiss at the teleconference scheduled for August 6, 2024 at 3:00 p.m. The Clerk of Court is directed to terminate the motion pending at Dkt. No. 43.

/s/Erik Dykema
Erik Dykema, Esq.

Attorney for EnviroMD Group LLC, KLCC Wholesale Inc., RZ Smoke Inc., Urban Smoke Distributors, and GT Imports

SO ORDERED.

Dated: August 1, 2024
New York, New York


GREGORY H. WOODS
United States District Judge